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| 09/844,047      | 04/30/2001  | Ronald L. Beale      | 133/28              | 2696             |

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08/28/2003

EXAMINER

BREVARD, MAERENA W

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3727

DATE MAILED: 08/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/844,047

Applicant(s)

BEALE, RONALD L.

Examiner

Maerena W. Brevard

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4,9-12,14,15, and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,9-12,14,15 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-4, 9-12, 14, 15, and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Regarding claims 1 and 9, the word "means" is preceded by the words "pump" and "valve" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the words preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

The dependent claims not specifically mentioned are rejected as being dependent upon a rejected base claim, since they inherently contain the same deficiencies therein.

### ***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-4, 9-12, 14, 15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jaeger in view of Bertholon.

Jaeger discloses a back support apparatus (Figure 3) for use with a backpack, the apparatus comprises a pair of elongated inflatable bladders (18, both outer bladders) spaced generally parallel to each other, separated by a gap space (which includes the middle bladder),

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and connected to a front panel of the backpack and valve means (19) for deflating the bladders, but does not teach a pump means for inflating the bladders. However, Bertholon teaches a pump means (6) for inflating the bladder of inflatable shoulder straps. It would have been obvious to use the pump of Bertholon with the inflatable structure of Jaeger to inflate the bladders. Doing so would provide an attachment that would provide an easier and quicker means of inflating the bladders.

Regarding the bladders each having an upper terminus extending upwardly at least as high as the upper attachment points, it would have been an obvious matter of design choice to increase the size of the bladders to have the upper terminus extend at least as high as the upper attachment points, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Regarding claims 2-4 and 10-12, the two outer bladders are spaced at most two inches from each other and inflated to a diameter no more than two inches, to exert a support force against the user's spinal column from opposite sides thereof, to the same degree claimed.

Regarding claims 14 and 15, each bladder has one inflation chamber communicably connected to the inflation chamber of the other by at least a bridge conduit (the bottom portion of 18), wherein the conduit has an inflated diameter less than an inflated diameter of each bladder, to the degree claimed.

Regarding claim 17, the alternate embodiment (Figures 6 and 7) teaches the means for vertically connecting the pair of bladders to the front panel including a second panel (47)

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connected (48) to the front panel, rather than the hook and loop means of the embodiment in Figure 3.

*Response to Arguments*

6. Applicant's arguments filed February 13, 2003 have been fully considered but they are not persuasive. The amendments to the claims do not add any allowable subject matter and the claims are still rejected over the art as cited above.

*Conclusion*

7. Applicant's amendment necessitated the new ground of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maerena W. Brevard whose telephone number is 703/305-0037. The examiner can normally be reached on M-Th; 8:00 AM-6:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703/308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703/872-9302 for regular communications and 703/872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703/305-0037.

  
Maerena Brevard  
August 27, 2003

  
GREGORY VIDOVICH  
SUPERVISORY PATENT EXAMINER  
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